

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DENNIS M. DONOVAN

Plaintiff,

v.

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C., ROBERT M. GAULT,
individually, and PETER J. MARATHAS, JR.,
individually,

Defendants.

Civil Action No. 04-12110-MLW

**DEFENDANTS' MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S SUPPLEMENTAL MOTION TO IMPOUND**

Defendants Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Robert M. Gault and Peter J. Marathas, Jr. (collectively the "defendants") respectively request the Court to deny the Supplemental Motion to Impound (the "Supplemental Motion") filed by plaintiff Dennis Donovan ("Donovan"). As explained below, defendants oppose the Supplemental Motion because Donovan has failed to comply with this Court's rule governing motions to impound, and because the Supplemental Motion, like Donovan's original Motion to Impound, is not justified legally.

1. On October 8, 2004, plaintiff Dennis Donovan ("Donovan") filed a Motion to Impound Complaint. The defendants opposed the Motion on the grounds that (a) the Complaint did not contain sensitive or confidential information; (b) the Motion failed to identify any specific and identifiable harm that overcame the strong presumption favoring the public's right to have access to court filings; and (c) the Motion was moot because the Complaint had been

publicly available since it was filed on October 4, 2004, and, therefore, could not be said to contain confidential information. *See* Defendants Memorandum in Opposition to Plaintiff's Motion to Impound Complaint filed on October 21, 2004.

2. On October 26, 2004, the defendants moved to dismiss the Complaint. The defendants sought to have Donovan's claims dismissed because, *inter alia*, it was clear from the face of the Complaint that Donovan had not pleaded and could not prove the defendants' alleged conduct caused him to be injured.

3. As a result of the defendants' Motion to Dismiss, on November 5, 2004, Donovan filed an Amended Complaint under Rule 15(a) to include two additional allegations concerning causation. Except for the two allegations concerning causation, the Amended Complaint is in all other respects identical to the original Complaint.

4. On November 23, 2004, more than two weeks after the Amended Complaint was filed, Donovan filed the Supplemental Motion. In doing so, Donovan failed to comply with Local Rule 7.2(d) which requires that "[m]otions for impoundment must be filed and ruled upon prior to submission of the actual material to be impounded, unless the court orders otherwise." Here, Donovan filed the Supplemental Motion 18 days after filing the material to be impounded (the Amended Complaint). Because Donovan should have and could have filed the Supplemental Motion before filing the Amended Complaint, his failure to comply with Local Rule 7.2(d) requires that the Supplemental Motion be denied.

5. The Supplemental Motion also should be denied because the Amended Complaint, like the original Complaint, does not contain sensitive or confidential information, and because Donovan has not identified any specific and identifiable harm that outweighs the

strong presumption entitling the public to have access to pleadings and other documents filed with the Court.

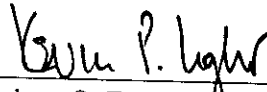
6. Finally, as was the case with the original Motion to Impound, the Supplemental Motion has been mooted by the Amended Complaint being a public record for more than two weeks. As a matter of law, therefore, the Amended Complaint cannot be said to contain confidential information.

For these and the other reasons set forth in Defendants' Opposition to Plaintiff's Motion to Impound Complaint, the Supplemental Motion should be denied.

Respectfully submitted,

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C., ROBERT M. GAULT,
And PETER J. MARATHAS, JR.,

By their attorneys,



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Dated: December 2, 2004

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I HEREBY CERTIFY THAT A TRUE COPY OF
THE ABOVE DOCUMENT WAS SERVED
UPON THE ATTORNEY OF RECORD FOR
EACH OTHER PARTY BY MAIL/ ~~FILED~~ ON

DATE 12/2/04 SIGNATURE KP Light